IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.3693 of 1997

1. Tamil Nadu Thirukoil Thozhilalarkal
   Union, (Register No.1796 of 1988)
   represented by its State General
   Secretary, No.27, Second Street
   Jayalakshmi Puram
   Nungambakkam, Chennai-600 034.

2. S.Bhoopathy .. Petitioners

versus

1. The Commissioner
   Hindu Religious and Charitable
   Endowments
   Uthamar Gandhi Salai
   Chennai-600 034.

2. The Joint Commissioner/
   Executive Officer
   Arulmighu Meenakshi Sundareswarar Koil
   Madurai.

3. The Assistant Commissioner/
   Executive Officer
   Arulmigu Subramanya Swamy Koil
   Thiruparamkundram.

4. P.Chandrasekaran
5. N.Ravindran
6. G.Ganeshkumar
7. G.Anandan
8. Selvi C.Kavithamani
9. A.Perumal
10. G.Azhagar Raja
11. C.Anbazhagan
12. A.Kannan
13. C.Manickavasagam
14. P.Prabhu
15. K.Kannan
16. Tmt.T.Shanthi
17. M.Selvan
18. K.Pugazhendhi

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19. K.Murugan
20. Selvi M.Jayasudha .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent in proceedings Mu.Mu.No.58104/96/Z2 dated 21.8.1996, Mu.Mu.No.68981/96/ Z1 dated 5.9.1996 and Mu.Mu.No.78012/96/Z1 dated 14.10.1996, to quash the same and to direct the first respondent to appoint eligible candidates who are employees of the temples and the members of the petitioner Union in strict conformity of the earlier circulars ordered by the first respondent and in Circular No.11/95/I1 dated 4.8.1995.

For petitioners : Mr.T.S.Sivagnanam

For 1st respondent : Mr.G.Sukumaran
Special Govt. Pleader (HR & CE)

For 2nd respondent : Mr.P.Gopalan

For 3rd respondent : Mr.C.Selvaraju
Senior Advocate

For respondents-6 to 15 : Miss K.Suguna

For respondents-16 to 20 : No appearance

ORDER

The petitioner has prayed for a Certiorarified Mandamus to call for the records relating to the orders of the first respondent dated 21.8.1996, 5.9.1996 and 14.10.1996, to quash the same and to direct the first respondent to appoint eligible candidates who are employees of the temples and the members of the petitioner-Union in strict conformity with the earlier circulars of the first respondent and circular dated 4.8.1995.

2. The petitioner in this writ petition is a Trade Union registered under the Trade Unions Act and recognised by the Government of Tamil Nadu. It has branches all over the State. According to the petitioner Union, in the matter of filling up of vacancies in the various temples under the control of the H.R. & C.E. Department, as there was no uniform procedure, the Commissioner had issued various circulars dated 7.2.1989, 22.5.1992, 16.6.1993, 15.3.1995 and 4.8.1995. According to the petitioner, the following are the salient features of the guidelines:

(i) The Executive Officers were directed to call for applications

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from all eligible employees of all the temples and by displaying the same prominently in the notice board of the temple and a minimum of one month notice.

(ii) Proof of such publication in all the temples in every region had to be obtained by the concerned Deputy Commissioner or the Joint Commissioner as the case may be.

(iii) Copies of the notices calling for application should be published in the office of the concerned local authority and Government Offices as well as District Employment Office.

(iv) The applications so received have to be registered and the applicants have to be called for oral interview before the concerned Executive Officer or the Trustee.

(v) After awarding marks to the candidates, the list of eligible candidates has to be prepared and forwarded to the Commissioner with the recommendations of the interviewing authority.

(vi) Appointments have to be made only after the approval of the first respondent.

It was also ordered that any vacancies and new posts in senior grade temples, employees of the temples other than senior grade temples have to be first considered and copies of the publications calling for applications have to be communicated to the petitioner union.

3. It is further stated that the employees of the temple are paid from and out of the funds of the temple and as there was no uniformity in the scale of pay between smaller posts in the various temples, several representations were made by the Unions. The Commissioner had issued circulars to fill up vacancies which arise in temples by calling for applications from all the employees in the region with a view to provide employment opportunities with better service conditions. The first respondent had also issued a circular on 20.7.1992, directing strict adherence to the circulars by all the Executive Officers and that while filling up vacancies arising in any temple, first preference has to be given to the staff working in that particular temple on the basis of seniority. The petitioner-Union contends that the said circular dated 20.7.1982 has not been rescinded or modified.

4. However, according to the petitioner, in the recent past, particularly in the filling up of the posts in the second and third respondent temples, vacancies were being filled up in violation of the said procedure. The second petitioner, claiming to be a member of the Union, alleges to be aggrieved by such improper selection and appointment. It is stated that on 31.12.1994, the second respondent had called for applications for filling up of vacancies in eight categories of posts in the second respondent temple. The said notice was published in the temple notice board and the petitioner had applied for the post of Maniam and Record Clerk by application dated 13.4.1995 in the scale of pay of Rs.725-15-1130. He was possessed of the requisite educational qualification as well as age-wise. He had also mentioned that he was working as a Clerk

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in Arulmighu Dhandapani Thirukoil, Madurai. The said application was acknowledged by the second respondent on 15.1.1995. Another member of the first respondent-Union one Paramasivam, who was also working as a Watchman in the same temple, also applied for the post of Office Assistant in the second respondent temple. The said application dated 14.1.1995 was acknowledged by the second respondent on 15.1.1995. It is further stated that even while the application of the second petitioner and all the members of the Union were pending, the Union, by representation dated 10.7.1995, raised certain demands with the first respondent, inclusive of the request to fill up the vacancies arising in the senior grade temples from and out of the employees of the temples.

5. The petitioner further submits that the third respondent, by notification dated 8.1.1996, called for applications from the temple employees for eight categories of posts and by application dated 5.2.1996, the second petitioner applied for the post of Junior Assistant. While he was eagerly hoping that he would be called for the interview, to his surprise and shock, the first respondent had posted eleven candidates for the post of Record Clerk in the second respondent temple by order dated 21.8.1996 and appointed three Record Clerks and two Junior Assistants in the third respondent temple by proceedings dated 5.9.1996 and 14.10.1996. Aggrieved by the same, the petitioner has filed the above writ petition, contending that such appointments were contrary to the circulars and regulations issued by the Government in the matter of filling up of vacancies.

6. In the counter affidavit filed by the first respondent, it is contended that the claim of the petitioner that the instructions given on the circular dated 4.8.1995 should be complied with was not correct. The said circular had been issued only to remove the constraints on the employees of the temple to apply for the post. The circulars issued earlier have been cancelled by the Commissioner's circular dated 25.6.1996. It is true that all appointments have to be made in the temples only with the approval of the Commissioner. The allegation that appointments were made in gross violation of the procedure was incorrect. The notification calling for appointment was published in the notice boards of the temples to which appointments are being made. The second petitioner himself admits that he has seen the notification in the temple notice board and hence, he cannot be aggrieved. The circular issued by the first respondent dated 4.8.1995 reiterates that the application of the existing employees will have to be considered only on merits. The applications were considered on merits and suitable candidates have been appointed to the concerned two temples in pursuance of the orders passed by the first respondent dated 21.8.1996, 5.9.1996 and 14.10.1996. The appointments thus made are in accordance with the procedure and not against the provisions of the Act.

7. The first respondent further contends that the petitioners

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have no locus standi to question the authority of the first respondent on giving age relaxation to the recruits, which is within the power of the first respondent. The Commissioner was empowered to grant such exemption. The petitioner has no locus standi to question the recruitment from the open market. As regards the impugned appointment, it is stated that in view of the emergent requirements and to provide better service to the worshippers and for proper administration of the temple in an effective manner, the Deputy Commissioner had sent the orders of appointment, keeping in mind the interest and for better service conditions in the temples.

8. In the counter affidavit filed by the second respondent, it is stated that in order to provide facilities to the worshippers, a notification was affixed on 31.12.1994, pursuant to the directions of the Commissioner calling for applications for appointment to the post of Record Clerk, Maniam, Archakar, Paricharagar, etc. Calls were received from various persons and they were placed before the first respondent for necessary action. Pursuant to the communication dated 21.8.1996, respondents-4 to 14 were appointed in the second respondent temple by invoking the power under Rule 17 of the H.R. and C.E. Service Rules. The members of the petitioner Union who were already working in other temples are entitled to forward their applications only through the temple in which they are working. By not having done so, the petitioners are not entitled to challenge the impugned orders. Appointments were made only in the interest of the proper administration of the temple.

9. In the counter affidavit of the third respondent, the very same stand as stated in the counter affidavit of respondents-1 and 2 have been reiterated. While referring to the circulars, it is stated that as per the circular dated 25.6.1996, it was made clear that the earlier circulars will have no application and therefore, the earlier circulars have been impliedly superseded. It was only on the basis of the said circulars received from the Commissioner and the Department appointments have been made. As far as the third respondent temple was concerned, there was neither a Board of Trustees nor a fit person and all the affairs were being discharged only by the Executive Officer. There was absolutely no deviation nor any violation of the rules and regulations relating to appointment.

10. In the counter affidavit filed by the seventh respondent, one of the appointees, it is stated that he and the other respondents were appointed as Record Clerks in the year 1996, and they were fully possessed of the qualifications to the post. Even as per the averments in the affidavit in the writ petition, announcements have been made calling for applications for appointment to the various authorities concerned. One Bhoopathy and Paramasivam also have applied in response to the notification. Therefore, the contentions raised in the writ petition cannot be sustained. The said Bhoopathy was the Secretary of the Madurai

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Division Small Temples Association and since he had the knowledge of the applications called for by the respondents, he had applied for the same. If he was really interested in the welfare of the members of the Association, he should have informed the members of the Association. However, the proceedings contemplated in the matter of appointment of Record Clerks have been correctly complied with. The Association cannot question the appointment of the respondents without even having applied for the posts. The circular on the basis of which the writ petition has been filed has been cancelled. Since the respondents alone were qualified, two of them were given age relaxation by the Commissioner, who is vested with the power to grant the relaxation.

11. Mr.T.S.Sivagnanam, learned counsel appearing for the petitioners, referred to a series of circulars issued in the context of appointments and postings to be made for filling up of vacancies in various temples and contends that the preferential rights of individuals already working in the various temples under the control of H.R. & C.E. Department were duly recognised in these circulars, especially in the circular dated 4.8.1995. It is true that they have to subject themselves to a selection process by an interview and should satisfy the basic qualifications prescribed for the post. But being a recognised Trade Union, they had bargained for better working conditions and for recognition of the work rendered by them. The acceptance of their demands in those circulars is a valuable right and is enforceable. That being so, the respondent temples were not following the instructions and were making appointments in an illegal manner for obvious reasons and with ulterior motives and favouring persons close to the authorities. Secondly, the candidates who have now been selected have not been subjected to any selection process, which is only due to extraneous reasons. This is also evident from the fact that relaxation of age had been given to them. It is further stated that they were also not called through the employment exchange or by any press notification.

12. Learned counsel also submitted that there was no Board of Directors in respect of the second and third respondent temples and the Executive Officers have not been appointed as fit persons and they have no power to appoint anyone. The petitioners' request to cancel their appointments by several representations did not evoke any response and hence, the writ petition.

13. Learned counsel also referred to Section 25 of Act 22 of 1959, (hereinafter called the Act) and it is contended that it is only the trustees who can make the appointments and not the Executive Officers. Reference was also made to Tamil Nadu Religious Institutions (Officers and Servants) Service Rules, 1964 (hereinafter called the Rules), in support of his contention that the Rules prescribe specific age of educational qualifications, which have been given a go bye while appointing the respondents.

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14. Learned Special Government Pleader appearing for the official respondents, contended that the petitioners had based their claims on superseded circulars and instructions. The impugned appointments were made after the coming into force of circular dated 25.6.1996, in and by which, the circulars relied upon by the petitioners were specifically superseded. Therefore, there was no obligation to intimate the petitioner-Union. The appointments were made only to meet the emergent requirements which cannot be questioned by the petitioner. The appointments were intended to provide better services to the worshippers. The entire administration of the temples is vested with the Commissioner under Section 23 of the Act and he also had the power of granting relaxation under Rule 17. The second petitioner was only a Clerk and cannot be appointed for the post for which he had applied for. The appointments were made only to attend to the convenience of the worshippers and to look after their footwear (காலணி). Learned Special Government Pleader also produced the files relating to the impugned orders of appointment.

15. Miss Suguna, learned counsel for the respondents/appointees, contended that the fact of calling for applications had been put up on the notice board is admitted by the petitioner and it is only pursuant to the same, the second petitioner and few others belonging to the petitioner Union had applied. The present objections have been taken up only because they have not been selected. Their applications were considered on merits and they were not selected. Paramasivam, one of the applicants, was the President of the Union and he could have taken steps to convey the information to all the members of the Union. Learned counsel also reiterated that the earlier circulars had been withdrawn. The appointments were made only after considering the mutual qualifications and merits. Learned counsel also stated that all of them have put in more than seven years of service as on date and some of them have even passed the departmental tests. They were performing their duties to the satisfaction of the authorities and hence, in the interest of justice their appointment may not be disturbed.

16. I have considered the submissions of both sides.

17. The objection of the petitioners as raised by the learned counsel for the petitioners to the impugned appointments are as follows:

(i) No intimation had been given to the Union in terms of the earlier circulars inclusive of the circular dated 4.8.1995. The object of the said circular was to give preference to the employees already working in the temples;

(ii) No process of selection was undergone and appointments have been made and relaxations granted for extraneous reasons in an arbitrary manner only to favour the appointees. None of them were appointed through employment exchange or by issuing any public advertisement;

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(iii) The claims of the second petitioner and similarly placed claimants belonging to the petitioner-Union had not been properly considered.

18. The contention of the petitioner that the claims of the petitioner-Union and their members had not been considered has not been properly dealt with by the respondents. The stand of the respondents is that there was no such need to give any notice to the Unions, nor to give any preference to the members of the Union, inasmuch as with the issuance of the circular dated 25.6.1996, it is implied that all the earlier circulars are superseded. I find this contention as untenable.

19. A perusal of the circular dated 4.8.1995 discloses that it was issued in the interest of the members of the petitioner-Union and their request has been accepted by the Government. The reasons for such a circular are not only obvious, but also not denied by the respondents. As employees already working in the various temples under the control of the Department, they should have preferential opportunity to be considered for promotions, failing which, they would be stagnating in the same posts for ever. Secondly, some of them may be working in temporary or casual capacity for several years without being made permanent and on low salary. Therefore, the fact that the object of the said circular was to subserve a healthy labour/service policy cannot be denied. It is true that selection will be only on merits, but their claims will have to be given due weightage. That was the object of the said circular. The respondents, being unable to dispute the said position, have chosen to take up an untenable stand that with the issuance of the circular dated 25.6.1996, all the earlier circulars stood superseded.

20. Firstly, a perusal of the circular dated 25.6.1996 shows that only circulars dated 7.2.1989, 22.5.1992, 16.6.1993 and 14.3.1995 are superseded. There is no mention of the circular dated 4.8.1995. There is also no question of any implied supersession. Secondly, the issue dealt with under the circular dated 25.6.1996 is entirely different. That circular does not deal with the claim of the petitioner-Union, but only with the method of registering the applications, the competent authorities authorised to do so, the details to be furnished, etc., and the appointments could be made only after obtaining prior permission of the Commissioner. In short, the circular deals with streamlining the receipt of applications and registering them and have nothing to do with the subject of right of the petitioner Union and its members. That is the reason why there is no reference at all to the circular dated 4.8.1995. Therefore, I am unable to sustain the contention that the circular dated 4.8.1995 had been superseded. It follows that the appointments having been made without complying with the second circular, have to be held as bad.

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21. The contention raised by Miss Suguna that the notice was put up in the notice board and that the second petitioner and some other office bearers have knowledge of the notice cannot at all be accepted. If a certain requirement is to be complied with in a particular manner, there has to be a strict compliance of the said requirement and it is no excuse to say that the President of the Union could have intimated the members. It is true that it may not be open to the second petitioner nor the office bearers of the Unit, who had applied for the post, to raise a contention that the Union had not been notified. They would be estopped from raising such a contention in their individual capacity. But it is certainly open to the Union, the first petitioner, to raise the said issue.

22. It is also not disputed that appointments had been made without following the procedure of either calling for names from the employment exchange or by issuing any public advertisement in the newspapers. The files disclose that the impugned appointments have been made out of sheer favouritism and arbitrariness and through back-door method.

23. The file relating to the appointments in the second respondent temple (Mu.Mu.No.58104/96 dated 21.8.1996), contains at Page Nos.57 and 58, the letter of the Executive Officer of the temples to the Commissioner dated 4.8.1996. The following is the operative portion of the letter dealing with the appointments of respondents-12, 14 and 15:

" இந்த நான்கு நபர்கள் நியமித்தாலும், மேற்படி பணி செய்வதற்கு போதுமானதாக இல்லை. என்பதால், மேலும் மூன்று நபர்களை பதிவறை எழுத்தர் நிலையில் ஊதிய விகிதம் ரூ.725-15-1130 என்ற ஊதிய அடிப்படையில் அதற்குரிய படிகளுடன் அடியிற்குறிப்பிடப்பட்டுள்ள நபர்களை நியமனம் செய்துகொள்ள அனுமதியளிக்க வேண்டுமாய் பணிந்து கேட்டுக் கொள்ளப்படுகிறது.

1) திரு ஏ.கண்ணன், த/பெ.ஆர்.அயோத்தி ராமன்
2) திரு வி.பிரப, த/பெ. எஸ்.வீரமணி
3) திரு கே.கண்ணன், த/பெ. கருப்பையா

மாண்புமிகு அறநிலையத்துறை அமைச்சர் அவர்களால் மேற.கூறிய 3 நபர்களின் வேலை வாய்ப்புக் கோரிய விண்ணப்பங்களை பரிவுடன் பரிசீலித்து மேற்படி 3 நபர்களையும் பணி நியமனம் செய்ய சிபாரிசு செய்து ஆணையர் அவர்களுக்கு பிரேரணை அனுப்பிவைக்கும்படி என்னிடம் கேட்டுக் கொண்டார்கள். அதன்படி, மேற்படி 3 நபர்களின் விண்ணப்பங்களும் கல்வித் தகுதிச் சான்றிதழ்கள் நகல்களும் இத்துடன் இணைத்து அனுப்பப்பட்டுள்ளது.

இத்திருக்கோயிலுக்குத் தற்பொழுது அறங்காவலர் குழுவோ அல்லது தக்காளரோ, இல்லாத நிலையினால் தீர்மானம் எதுவும் பெற்று இத்துடன் இணைத்து அனுப்ப இயலவில்லை என்ற விபரம் பணிந்து தெரிவித்துக் கொள்ளப்படுகிறது.

மேற்கண்டவாறு புதிதாக அனுமதிக்கப்படவுள்ள 3 பதிவறை எழுத்தர்கள் பதவிகளில் மாண்புமிகு அறநிலைய

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அமைச்சர் அவர்களால் பரிந்துரை செய்யப்பட்டு 3 நபர்களையும் பணி நியமனம் செய்ய அனுமதி வழங்க வேண்டுமாய் பணிந்து கேட்டுக் கொள்ளப்படுகிறது.

மேற்கண்ட மூன்று பதிவறை எழுத்தர் பதவிகளை புதிதாக அனுமதிப்பது குறித்து இத்திருக்கோயிலுக்கு பசலி 1க்கு ரூ.71208/- கூடுதல் நிர்வாக செலவு ஏற்பட உள்ளது. நிரந்தர சிப்பந்திகள் பட்டியலின்படி வழங்கப்படும் ஊதியத்தொகை உட்பட தற்பொழுது வேண்டப்பட்ட 3 பணியாளர்களின் ஊதியமும் சேர்த்தும், மொத்தம் ரூ.84,57,418/- செலவு ஏற்படும். இது வரிவிதிப்புக்கு நிர்ணயம் செய்யப்பட்ட வருமானத்தில் 41.5% ஆகும்,

அவசர அவசியத்தினைக் கருதி, மேலே பரிந்துரை செய்துள்ள மூன்று பதிவறை எழுத்தர்களையும் புதியதாக ஏற்படுத்தவும், அவ்வாறு ஏற்படுத்தப்படும் பணியிடங்களுக்கு மேற்கண்ட 3 நபர்களையும் அறநிலையச் சட்ட விதிகளுக்குட்பட்டு பணி நியமனம் செய்வதற்கு தக்க உத்திரவு வழங்குமாறு பணிந்து கேட்டுக் கொள்ளப்படுகிறது. "

24. The file relating to appointments in the third respondent temple (Mu.Mu.68981/96 dated 5.9.1996) also discloses appointments having been made at the will and pleasure of the officials and at Page No.68, is the letter of the Executive Officer dated 3.9.1996 recommending appointment of one T.Shanthi (Respondent No.16). This recommendation has been endorsed subsequently by the Joint Commissioner and the Commissioner. The operative portion of the letter is as follows:

" பார்வையில் காணும் குறிப்பில் திருமதி.டி.சாந்தி என்பவர் எஸ்.எஸ்.எல்.சி. படித்துள்ளதாகவும், தனது குடும்ப கஷ்டத்தை போக்கவும், வேலைக்கு ஆணைசெய்யும்படி கேட்டுள்ளார்.

இத்திருகோயிலில் காலியாகவுள்ள பதிவறை எழுத்தர் பணியிடமானது ஏற்கனவே அங்கீகரிக்கப்பட்டதாகும். மேற்படி பணியிடத்திற்கான அடிப்படைச் சம்பளம் ரூ.725/- மற்றும் வழக்கத்திலுள்ள படிகள் ஆகும்.

இத்திருக்கோயிலின் பசலி 1405-க்கான சகாயத்தொகை நிர்ணயவருமானம் ரூ.65,41,700/- ஆகும். இப்பணியிடத்தில் திருமதி.டி.சாந்தி என்பவரை நியமனம் செய்தால், சிப்பந்திகள் சம்பளச் செலவு 35.36%-சதவிகிதம் ஆகும்.

எனவே, திருக்கோயில் நலன்கருதி அவசரம் மற்றும் அவசியத்தினை கருதி காலியாகவுள்ள பதிவறை எழுத்தர் பணியிடத்தில் திருமதி.டி.சாந்தி க/பெ.சேதுராமன் என்பவரை ரூ725-15-1130 என்ற சம்பள ஏற்ற முறையில் அடிப்படை சம்பளம் ரூ.725 மற்றும் வழக்கத்திலுள்ள படிகளுடன் நிரந்தரமாக நியமனம் செய்ய பணிந்து கேட்டுக் கொள்ளப்படுகிறது. இத்துடன் பணி நியமனம் குறித்தான உரிய படிவம் பூர்த்தி செய்தும், கணக்கீட்டுத் தாளுடன் பணிந்தனுப்பப்படுகிறது. "

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25. The above are only two specific references shown as examples and admittedly, all appointments have been made only by such method and not in accordance with the Rules. The contention of Miss Suguna that the process of selection was valid is stated only to be rejected, in view of the above glaring facts and materials. Mere receipt of intimation calling upon the appointees to appear before the Executive Officer does not mean that there was an interview or comparative assessment between various applicants. They were appointed only on the basis of recommendations. It is not even the case of the Government in their counter affidavit regarding any interview having been conducted.

26. It is also not disputed that some of the appointees did not satisfy the qualifications and relaxations had to be ordered. It is true that there is a general power of relaxation vested on the Commissioner. But such a power is not to be used for perpetuating or to regularise illegal appointments. Such power is to be used only in rare cases to avoid any injustice to any individual case and not as a matter of course to erase the illegality in the initial appointment. It is not as though qualified persons were not available at that time.

27. As regards the failure to comply with the circular dated 4.8.1995, Miss Suguna chose to contend that the second petitioner and one or two office bearers had the knowledge of the filling up of the vacancies. I am afraid that it is not proper compliance of the requirements under the circular. As I had observed earlier, the said fact may operate as an estoppel against those individuals but not as against other members of the Union who had no knowledge of the proposals to appoint. The reason why the said circular has been issued is to comply with the well accepted principles of labour policy, as I had mentioned above. Therefore, ignoring the said circular is not in the interest of the Department which had accepted the demand of the petitioner Union.

28. The contention that the appointees had already been working for seven years is hardly a reason to sustain the illegal appointments. The writ petition had been filed immediately on the issuance of the orders of appointment and interim orders have also been obtained, necessitating the respondents to file a petition to vacate the stay. Continuance in the post as a result of pendency of the writ petition cannot result in putting a premium in favour of illegal appointments. The respondents were fully aware of the risk involved in the year 1997 itself and have chosen to undertake the risk.

29. The duty of the Court to set aside illegal appointments cannot be ignored out of misplaced sympathy. The only possible favourable observation which can be made in their favour is that while making fresh appointments, the claim of the party respondents

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can be given a preferential treatment, considering their services till now. However, if they are found fit, they can be appointed only as fresh appointees.

30. I am not inclined to go into the merits of the claims of the second petitioner. It is not for this Court to go into the conclusions of the appointing authority on the merits of the second petitioner to be appointed. The fact remains that appointments were made in an improper manner which necessitates fresh process of recruitment in which the second petitioner would also be at liberty to participate.

31. With the result, for the following reasons, I am inclined to allow the writ petition:

(i) The requirements under the circular dated 4.8.1995 have not been complied with;

(ii) The impugned appointments are wholly arbitrary and irregular and without calling for names either from the employment exchange or by publishing any advertisement in the Press.

Consequently, the writ petition is allowed and the official respondents are directed to take steps to fill up the vacancies only in accordance with the rules and regulations and also by adhering to Circular No.11/95/I/1 dated 4.8.1995. No costs.

This Petition having been posted on (ie 20.8.2005) Saturday the Twentieth day of August 2005 "For being Mentioned" in pursuance to the order of this Court dt. 22.7.2005 and made herein and in the presence of the aforesaid Advocate, are either side and of Mr. J. Ram, Advocate for 5th Respondent the Court made the following order:-

The above writ petition is posted today for "Being mentioned".

2. It is represented that the fourth respondent has not joined duty while the fifth respondent was selected much earlier to the impugned selection. Learned counsel for the petitioner has no objection to record in so far as the statement with reference to the fourth respondent. As regards the fifth respondent, the statement of the learned counsel for the respondent is placed on record and the order in the writ petition shall not operate against them.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Commissioner
   Hindu Religious and Charitable
   Endowments
   Uthamar Gandhi Salai
   Chennai-600 034.

2. The Joint Commissioner/
   Executive Officer
   Arulmighu Meenakshi Sundareswarar Koil
   Madurai.

3. The Assistant Commissioner/
   Executive Officer
   Arulmigu Subramanya Swamy Koil
   Thiruparamkundram.

1 cc to Mr.T.S. Sivagnanam, Advocate, Sr. 35076
1 cc to Mr.P. Gopalan, Advocate, Sr. 35046
1 cc to the Govt. Pleader, Sr. 35101

W.P.No.3693 of 1997
22.7.2005/
20.8.2005

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